

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LHF PRODUCTIONS, INC.,

Case No. C16-621RSM

Plaintiff,

ORDER GRANTING IN PART LHF'S MOTIONS FOR DEFAULT JUDGMENT

V.

DOE 1, *et al.*,

Defendants.

I. INTRODUCTION

This matter comes before the Court on Plaintiff LHF Productions, Inc.’s (“LHF”) Motion for Default Judgment against Roselen Torres (Dkt. #35), and Motion for Default Judgment Against Sherwin Mendoza (Dkt. #37). Having reviewed the relevant briefing and the remainder of the record, LHF’s motions for default judgment (Dkts. #35 and #37) are GRANTED IN PART for the reasons discussed below.

II. BACKGROUND

LHF's motions for default judgment are just a portion of more than fifty default judgment motions filed by LHF in ten of sixteen related cases before the Court.¹ All sixteen

¹ See Case Nos. C16-551RSM, C16-552RSM, C16-621RSM, C16-623RSM, C16-731RSM, C16-864RSM, C16-865RSM, C16-1015RSM, C16-1017RSM, C16-1175RSM, C16-1089RSM, C16-1090RSM, C16-1273RSM, C16-1354RSM, C16-1588RSM, and C16-1648RSM.

1 cases assert the same cause of action. LHF alleges that close to two hundred named
2 Defendants unlawfully infringed its exclusive copyright to the motion picture *London Has*
3 *Fallen*, which it developed and produced, by copying and distributing the film over the Internet
4 through a peer-to-peer network using the BitTorrent protocol. Plaintiff uncovered the identities
5 of the alleged infringers after serving several internet service providers (“ISP”s) with
6 subpoenas issued by the Court. Amended complaints identifying the alleged infringers were
7 subsequently filed. Defendants are named in the same Amended Complaint because, given the
8 unique identifier associated with a particular digital copy of *London Has Fallen*, along with the
9 timeframe when the internet protocol address associated with a named Defendant accessed that
10 unique identifier, LHF alleges the Defendants were all part of the same “swarm” of users that
11 reproduced, distributed, displayed, and/or performed the copyrighted work. Dkt. #14 ¶¶ 10, 35-
12 36. According to LHF, “[t]he temporal proximity of the observed acts of each Defendant,
13 together with the known propensity of BitTorrent participants to actively exchange files
14 continuously for hours and even days, makes it possible that Defendants either directly
15 exchanged the motion picture with each other, or did so through intermediaries” *Id.* ¶ 30.
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17 In the instant action, Defendant Torres and Defendant Mendoza (collectively
18 “Defendants”) did not respond to LHF’s Amended Complaint. The Court entered default
19 against Defendants on October 18, 2016, after both parties failed to respond to LHF’s Amended
20 Complaint. *See* Dkts. #31 and #32. LHF’s motions for default judgment against Defendants
21 are now before the Court.

22 III. DISCUSSION

23 Based on this Court’s Order of Default and pursuant to Rule 55(a), the Court has the
24 authority to enter a default judgment. Fed. R. Civ. P. 55(b). However, prior to entering default
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1 judgment, the Court must determine whether the well-pleaded allegations of a plaintiff's
 2 complaint establish a defendant's liability. *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir.
 3 1986). In making this determination, courts must accept the well-pleaded allegations of a
 4 complaint, except those related to damage amounts, as established fact. *Televideo Sys., Inc. v.
 5 Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987). If those facts establish liability the court
 6 may, but has no obligation to, enter a default judgment against a defendant. *Alan Neuman
 7 Prods. Inc. v. Albright*, 862 F.2d 1388, 1392 (9th Cir. 1988) ("Clearly, the decision to enter a
 8 default judgment is discretionary."). Plaintiffs must provide the court with evidence to
 9 establish the propriety of a particular sum of damages sought. *Televideo*, 826 F.2d at 917-18.
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11 A. Liability Determination.

12 The allegations in LHF's Amended Complaint establish Defendants' liability for
 13 copyright infringement. To establish copyright infringement, LHF must demonstrate
 14 ownership of a valid copyright and that Defendants copied "constituent elements of the work
 15 that are original." *L.A. Printex Indus., Inc. v. Aeropostale, Inc.*, 676 F.3d 841, 846 (9th Cir.
 16 2012) (quoting *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361 (1991)). Here,
 17 LHF alleges it owns the exclusive copyright to the motion picture *London Has Fallen*. Dkt.
 18 #14 ¶¶ 5-9. LHF also alleges that Defendants all participated in the same "swarm" that
 19 unlawfully copied and/or distributed the same digital copy of *London Has Fallen*. *Id.* ¶¶ 10,
 20 26, 29, 30, 40. Because Defendants did not respond to LHF's complaint, the Court must accept
 21 the allegations in LHF's Amended Complaint as true. *See* Fed. R. Civ. Proc. 8(b)(6).
 22 Accordingly, LHF has established Defendants' liability.

23 B. Default Judgment is Warranted.

24 The Court must next determine whether to exercise discretion to enter a default
 25 judgment. Courts consider the following factors in making this determination:

1 “(1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff's
 2 substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at
 3 stake in the action; (5) the possibility of a dispute concerning material facts; (6)
 4 whether the default was due to excusable neglect, and (7) the strong policy
 5 underlying the Federal Rules of Civil Procedure favoring decisions on the merits.”
Eitel, 782 F.2d at 1471-72.

6 The majority of these factors weigh in favor of granting default judgment against
 7 Defendants. LHF may be prejudiced without the entry of default judgment as it will be left
 8 without a legal remedy. *See Landstar Ranger, Inc. v. Parth Enters, Inc.*, 725 F. Supp. 2d 916,
 9 920 (C.D. Cal. 2010) (finding plaintiff would suffer prejudice where denying default judgment
 10 would leave plaintiff without remedy). LHF's Amended Complaint is also sufficient, and
 11 Defendants did not present any evidence or argument to the contrary. Additionally, the Court
 12 finds there is a low probability that default against Defendants was due to excusable neglect;
 13 Defendants were given ample opportunity to respond to the filings in this matter between the
 14 time they were served with LHF's Amended Complaint and when LHF filed its motions for
 15 default judgment. Finally, although there is a strong policy favoring decisions on the merits,
 16 the Court may consider Defendants' failure to respond to LHF's Amended Complaint and its
 17 subsequent motions as an admission that LHF's motions have merit. *See* Local Civil Rule
 18 7(b)(2) (“[I]f a party fails to file papers in opposition to a motion, such failure may be
 19 considered by the court as an admission that the motion has merit.”).

20 However, the Court acknowledges that a dispute concerning the material facts alleged
 21 by LHF may arise. *See Qotd Film Inv. Ltd. v. Starr*, No. C16-0371RSL, 2016 WL 5817027, at
 22 *2 (W.D. Wash. Oct. 5, 2016) (acknowledging that dispute concerning material facts may arise
 23 in BitTorrent infringement cases). The Court also acknowledges that the amount at stake is
 24 not, as LHF contends, modest – LHF seeks enhanced statutory damages in the amount of
 25 \$2,500 along with \$2,393.50 in attorneys' fees, and \$140 in costs, for each named Defendant in
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1 this matter. Dkts. #36 ¶¶ 11-12 and #38 ¶¶ 11-12. Notwithstanding these considerations, the
 2 *Eitel* factors weigh in favor of granting default judgment against Defendants.

3 **C. Appropriate Relief.**

4 The Court next considers what relief to grant LHF. LHF seeks the following three
 5 categories of relief from each defendant: (1) permanent injunctive relief; (2) statutory damages;
 6 and (3) attorney's fees and costs. Each category is discussed in turn below.

7 i. *Permanent Injunctive Relief*

8 Permanent injunctive relief is proper in this matter. Section 502(a) of Title 17 of the
 9 United States Code allows courts to "grant temporary and final injunctions on such terms as it
 10 may deem reasonable to prevent or restrain infringement of a copyright." As part of a default
 11 judgment, courts may also order the destruction of all copies of a work made or used in
 12 violation of a copyright owner's exclusive rights. 17 U.S.C. § 503(b). Given the nature of the
 13 BitTorrent system, and because Defendants have been found liable for infringement, the Court
 14 finds Defendants possess the means to continue infringing in the future. *See MAI Sys. Corp. v.*
 15 *Peak Comput., Inc.*, 991 F.2d 511, 520 (9th Cir. 1993) (granting permanent injunction where
 16 "liability has been established and there is a threat of continuing violations."). Consequently,
 17 the Court GRANTS LHF's request for a permanent injunction against Defendants. The Court
 18 will issue a permanent injunction enjoining Defendants from infringing LHF's rights in *London*
 19 *Has Fallen*. The Court will also order Defendants to destroy all unauthorized copies of *London*
 20 *Has Fallen*.

21 ii. *Statutory Damages*

22 The Court will also award LHF \$750 in statutory damages for Defendants' infringement
 23 of the same "seed" file of *London Has Fallen*. The Copyright Act allows plaintiffs to choose
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1 between actual or statutory damages. *See* 17 U.S.C. §§ 504(b), (c)(1). The range of statutory
2 damages allowed for all infringements involved in an action, with respect to any one work for
3 which any two or more infringers are jointly and severally liable, is \$750 to \$30,000.
4 17 U.S.C. §504(c)(1). District courts have “wide discretion in determining the amount of
5 statutory damages to be awarded, constrained only by the specified maxima and minima,” and
6 they can take into account whether “the recovery sought is proportional to the harm caused by
7 defendant’s conduct.” *Harris v. Emus Records Corp.*, 734 F.2d 1329, 1355 (9th Cir. 1984);
8 *Curtis v. Illumination Arts, Inc.*, 33 F. Supp. 3d 1200, 1212 (W.D. Wash. 2014) (quoting
9 *Landstar*, 725 F. Supp. 2d at 921). Because the named Defendants in this action were alleged
10 to have conspired with one another to infringe the same digital copy of LHF’s motion picture,
11 the Court will award the sum of \$750 for Defendants’ infringement of the same digital copy of
12 *London Has Fallen*. Each of the Defendants is jointly and severally liable for this amount.

13 LHF argues that a statutory damage award of \$2,500 per defendant should be awarded.
14 The Court is not persuaded. Statutory damages are not intended to serve as a windfall to
15 plaintiffs, and enhanced statutory damages are not warranted where plaintiffs do not even try to
16 demonstrate actual damages. Additionally, the Court notes that LHF has not shown that any of
17 the Defendants is responsible for the “seed” file that provided LHF’s copyrighted work on the
18 BitTorrent network, and LHF has not presented evidence that Defendants profited from the
19 infringement.

20 LHF’s additional attempts to justify imposing enhanced statutory damages are also
21 unpersuasive. *See* Dkts. #35 at 5-6 and #37 at 5-6. In support of an enhanced award, LHF
22 argues that minimum statutory awards fail to accomplish the goals of the Copyright Act; LHF
23 argues that defendants are actually encouraged to disregard court summons and take default
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judgments when courts award minimum statutory damages. *Id.* The Court is not convinced. As noted in other BitTorrent cases within this jurisdiction, “[p]laintiff offers no support for the proposition that participation in federal litigation should be compelled by imposing draconian penalties that are out of proportion to the harm caused” by a defendant’s actions. *Qotd Film*, 2016 WL 5817027, at *3, n.2.

LHF also cites to tweets which appear to mock statutory minimum awards in other BitTorrent cases. *See* Dkts. #36, Exs. C and D and #38, Exs. C and D. The Court is not persuaded that viewpoints of individuals not named as defendants in this matter should be attributed to Defendants. LHF has presented no evidence that Defendants in this case will not be dissuaded from infringing in the future. Many barriers to accessing and understanding the legal system exist, and the Court refuses, absent evidence to the contrary, to adopt the position advocated by LHF. The Court “is [thus] not persuaded that a higher award is appropriate simply because certain members of the BitTorrent community are not impressed by a \$750 award against someone they do not know.” *Qotd Film*, 2016 WL 5817027, at *3.

iii. *Attorneys' Fees and Costs*

Finally, LHF asks the Court to award \$2,393.50 in attorneys' fees, and \$140 in costs, against each named Defendant in this matter. Dkts. #36 ¶¶ 11-12 and #38 ¶¶ 11-12. Pursuant to 17 U.S.C. § 505, the Court "in its discretion may allow the recovery of full costs by or against any party," and "may also award a reasonable attorney's fee to the prevailing party as part of the costs."

The Court agrees that LHF should be awarded attorneys' fees. Courts consider several factors, including "(1) the degree of success obtained, (2) frivolousness, (3) motivation, (4) objective unreasonableness (legal and factual), and (5) the need to advance considerations of

compensation and deterrence,” when making attorneys’ fee determinations under the Copyright Act. *Smith v. Jackson*, 84 F.3d 1213, 1221 (9th Cir. 1996) (citing *Jackson v. Axton*, 25 F.3d 884, 890 (9th Cir. 1994)). Because LHF has succeeded on its non-frivolous claims, and because an award would advance considerations of compensation and deterrence, LHF is entitled to attorneys’ fees.

However, LHF’s attorneys’ fees request is problematic. Courts determine fee award amounts by first determining a “lodestar figure,” which is obtained by multiplying the number of hours reasonably expended on a matter by the reasonable hourly rate. *Intel Corp. v. Terabyte Int’l, Inc.*, 6 F.3d 614, 622 (9th Cir. 1993). Courts may then adjust the lodestar with reference to factors set forth in *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 69-70 (9th Cir. 1975). The relevant *Kerr* factors here are: (1) the time and labor required; (2) the novelty and difficulty of the questions; and (3) the skill requisite to perform the legal services properly. “The lodestar amount presumably reflects the novelty and complexity of the issues, the special skill and experience of counsel, the quality of representation, and the results obtained from the litigation.” *Intel*, 6 F.3d at 622. Given the nature of the work done by attorney David A. Lowe, the Court does not find LHF’s requested hourly rate, or the number of hours requested, to be reasonable.

1. *Reasonableness of Rate Requested*

In the Ninth Circuit, the determination of a reasonable hourly rate “is not made by reference to rates actually charged the prevailing party.” *Chalmers v. City of Los Angeles*, 796 F.2d 1205 (9th Cir. 1986). Instead, the reasonable hourly rate is determined with reference to the prevailing rates charged by attorneys of comparable skill and experience in the relevant community. *See Blum v. Stenson*, 465 U.S. 886, 895 (1984). “Generally, when determining a

1 reasonable hourly rate, the relevant community is the forum in which the district court sits.”
 2 *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008). Courts may also consider
 3 “rate determinations in other cases, particularly those setting a rate for the plaintiffs’ attorney”
 4 as “satisfactory evidence of the prevailing market rate.” *United Steelworkers of Am. v. Phelps*
 5 *Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990).

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 7 Here, Mr. Lowe argues that \$450 is a reasonable rate for his work. However, Mr. Lowe
 8 does not present any evidence that this is the prevailing rate in this community, and similar
 9 cases in this District suggest that a lower rate is appropriate. *See Qotd Film*, 2016 WL 5817027
 10 at *3-4 (refusing to award requested rate of \$450 where counsel did not present evidence that
 11 this was prevailing community rate). Notably, in two unrelated BitTorrent cases litigated by
 12 Mr. Lowe, courts in this District have awarded Mr. Lowe a rate of \$350 and \$300 for work
 13 similar, if not identical, to the work done in this matter. *See Id.* (reducing counsel’s hourly rate
 14 to \$350); *also Dallas Buyers Club, LLC v. Nydam, et al.*, 2016 WL 7719874, at *5-6 (W.D.
 15 Wash. August 8, 2016) (reducing counsel’s hourly rate to \$300). In *Dallas Buyers Club*, the
 16 Court reasoned that an hourly rate of \$300 is far more appropriate because the cases litigated by
 17 Mr. Lowe did not require extensive skill or experience. 2016 WL 7719847 at *6. Indeed, it
 18 appears that in litigating *Dallas Buyers Club*, Mr. Lowe, similar to his actions in this case,
 19 recycled pleadings used in other cases and encountered little or no opposition from the named
 20 defendants. *Id.* Given that Mr. Lowe’s work in this matter amounts to nothing more than form
 21 pleading, the Court adopts the reasoning of other BitTorrent cases in this District and will
 22 reduce Mr. Lowe’s hourly rate to \$300.
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2. *Reasonableness of Hours Requested*

Turning to the reasonableness of the hours requested, the Court notes the party seeking fees “bears the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates.” *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983). The Court also excludes hours that are not reasonably expended because they are “excessive, redundant, or otherwise unnecessary.” *Id.* at 434. Further, the Ninth Circuit has held that it is reasonable for a district court to conclude that the party seeking attorney’s fees fails to carry its burden of documenting the hours expended when that party engages in “block billing” because block billing makes it more difficult to determine how much time was spent on particular activities. *Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 948 (9th Cir. 2007).

Mr. Lowe requests an unreasonable number of hours. In support of his attorneys' fees request, Mr. Lowe has submitted two, nearly identical, declarations requesting compensation for 3.2 hours he allegedly spent on each named Defendant. *See* Dkts. #36 and #36. Mr. Lowe also requests fees for the 1.9 hours his associate attorney spent on each named Defendant (at an hourly rate of \$250), and fees for the 3.3 hours his legal assistant spent on each named Defendant (at an hourly rate of \$145). *Id.* Mr. Lowe's activity within this District underscores the unreasonableness of this request.

Since April 2016, Mr. Lowe has filed sixteen cases, each naming LHF as plaintiff, against hundreds of doe defendants.² These cases have all proceeded in a similar manner. Each of the complaints originally filed in these sixteen cases lists doe defendants, identified only by IP addresses, and alleges infringement of LHF's exclusive rights in the motion picture *London Has Fallen*. Groups of doe defendants are named in the same complaint because they

² See Case Nos. C16-551RSM, C16-552RSM, C16-621RSM, C16-623RSM, C16-731RSM, C16-864RSM, C16-865RSM, C16-1015RSM, C16-1175RSM, C16-1017RSM, C16-1089RSM, C16-1090RSM, C16-1273RSM, C16-1354RSM, C16-1588RSM, C16-1648RSM.

1 allegedly infringed the same digital copy of *London Has Fallen* by participating in the same
2 BitTorrent “swarm.” After nearly identical complaints were filed, LHF, in all sixteen cases,
3 filed nearly identical motions for expedited discovery. Once the Court granted LHF’s motions
4 for expedited discovery, LHF then served subpoenas on the ISPs associated with each Doe
5 Defendant’s IP address. Once the ISPs provided LHF with the Doe Defendants’ identities,
6 LHF filed amended complaints. Except for the paragraphs identifying the Doe Defendants, all
7 of the amended complaints are identical. As of the filing of this Order, LHF has named 181
8 defendants.

10 After amending its complaints, LHF voluntarily dismissed claims against some named
11 Defendants. If a claim is not settled, LHF continues to pursue its claim against the named
12 Defendants. Many of the remaining defendants have not answered LHF’s amended complaints.
13 A named Defendant’s failure to respond to LHF’s amended complaints then prompts LHF to
14 file a motion for default. To date the Court has granted fifty-eight of LHF’s motions for default
15 in eleven of LHF’s sixteen cases; LHF is still awaiting response from named defendants in the
16 five remaining cases. Except for the captions, the motions for default are identical. After the
17 Court grants LHF’s motions for default, LHF files nearly identical motions for default
18 judgment.

21 While there is nothing wrong with LHF’s filing of several infringement claims, it is
22 wrong for LHF’s counsel to file identical complaints and motions with the Court and then
23 expect the Court to believe that it spent *hundreds* of hours preparing those same complaints and
24 motions. *See Malibu Media, LLC v. Schelling*, 31 F. Supp. 3d 910, 912-13 (E.D. Mich. 2014)
25 (“If Malibu Media is experiencing a massive invasion of infringers, it is entitled to seek redress
26 through the courts.”). In this case, Mr. Lowe would have the Court believe that he alone spent
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1 185 hours in preparing the filings of the fifty-one named defendants against whom default
2 judgment is now sought. This extravagant number of hours does not include the 138.6 hours
3 claimed by Mr. Lowe's associate attorney, or the 130.4 hours attributed to Mr. Lowe's legal
4 assistant.

5 There is nothing unique, or complex, about engaging in what can only be described as
6 "the essence of form pleading," and the Court will not condone unreasonable attorneys' fees
7 requests. *Malibu*, 31 F. Supp. 3d at 912-13 ("[T]here is nothing unique about this case against
8 [defendant], it is quite a stretch to suggest that drafting and preparing the complaint for filing
9 took more than an hour, or that 1.3 hours were spent on drafting a motion for default
10 judgment."). Here, aside from requesting an unbelievable number of hours, Mr. Lowe has also
11 engaged in the practice of block billing. *See* Dkts. #36 ¶ 10 and #38 ¶ 10. Given this practice,
12 the Court cannot adequately determine the amount of time spent on several of the tasks
13 Mr. Lowe requests compensation for. However, even if he had not engaged in this practice, the
14 Court finds it hard to believe that Mr. Lowe and his associate attorney spent hundreds of hours
15 to prepare filings in LHF's related cases that are nearly identical to filings Mr. Lowe has
16 previously used in other unrelated cases. *See, e.g.*, Case Nos. C16-371RSL and C14-1684RAJ.

20 Instead of awarding the unreasonable number of hours requested by LHF, the Court will
21 award Mr. Lowe one (1) hour, at an hourly rate of \$300, to compensate his firm for the time he
22 worked on each named Defendant, and one (1) hour, at an hourly rate of \$250, to compensate
23 his firm for the time his associate attorney worked on each named Defendant. The Court will
24 not award any of the time attributed to Mr. Lowe's legal assistant; review of the declarations
25 submitted indicate that Mr. Lowe's legal assistant performed purely administrative tasks in this
26 matter. *See* Dkt. #36 ¶ 10 (descriptions include "[p]repare waiver and request to waive
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1 summons; Print and mail amended complaint, exhibits, and waiver documents"); also Dkt. #38
 2 ¶ 10 (same).

3 The Court is satisfied that an attorneys' fee of \$550 per defendant is reasonable and
 4 sufficient to cover Mr. Lowe's form-pleading work. The requested costs from each named
 5 Defendant can be recovered in full.
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7 **IV. CONCLUSION**

8 The Court, having reviewed the relevant briefing and the remainder of the record, finds
 9 adequate bases for default judgment. Accordingly, the Court hereby finds and ORDERS:

- 10 1. LHF's motions for default judgment (Dkts. #35 and #37) are GRANTED IN PART.
- 11 2. Defendants are hereby permanently enjoined from directly, indirectly, or
 contributorily infringing LHF's exclusive rights in the motion picture film *London*
 Has Fallen, including without limitation by using the Internet to reproduce or copy
 London Has Fallen, to distribute *London Has Fallen*, or to make *London Has Fallen*
 available for distribution to the public, except pursuant to lawful written
 license or with the express authority of LHF;
- 12 3. To the extent any such material exists, Defendants are directed to destroy all
 unauthorized copies of *London Has Fallen* in their possession or subject to their
 control;
- 13 4. Defendants are jointly and severally liable for statutory damages in the amount of
 \$750;
- 14 5. Defendant Roselen Torres is individually liable for attorneys' fees in the amount of
 \$550 and costs in the amount of \$140.
- 15 6. Defendant Sherwin Mendoza is individually liable for attorneys' fees in the amount
 of \$550 and costs in the amount of \$140.
- 16 7. This matter is now CLOSED.

17 IT IS FURTHER ORDERED that the Clerk of the Court shall enter judgment consistent
 18 with this Order.

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DATED this 15th day of February, 2017.



RICARDO S. MARTINEZ
CHIEF UNITED STATES DISTRICT JUDGE